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Promotion and maintenance of the rule of law and good governance; action against corruption

Technical cooperation, including resource mobilization, and coordination of activities: Cooperation with other United Nations bodies and other entities

Statement** submitted by the International Society of Social Defence, a non-governmental organization in consultative status with the Economic and Social Council (category II).

The Secretary-General has received the attached statement,*** which is circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31 of 25 July 1996.

* E/CN.15/1997/1.

** The views expressed in this statement are those of the author, and do not necessarily reflect the views of the United Nations Secretariat.

*** This statement is reproduced in the form in which it was received .

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ISSD Statement
to the
Commission on Crime Prevention and Criminal Justice
at its sixth session
(Vienna. Austria, 28 April to 9 May 1997)

1. The International Society of Social Defence (ISSD), the Centro Nazionale di Prevenzione e Difesa Sociale (CNPDS) and the Centro Studi Giuridici "Michele De Pietro" jointly organized the XIIIth International Congress on Social Defence. It was held in Lecce (Italy), from 28 to 30 November 1996, in cooperation with the Crime Prevention and Criminal Justice Division of the UN Office at Vienna, under the auspices of the Ministry of Justice of Italy. The theme of the Congress was "Social Defence, Corruption, and the Protection of Public Administration and the Independence of Justice". As in the past Congresses, the theme related to major UN crime programme concerns. The Congress proceedings and its conclusions should provide topical input for the United Nations work in this field, particularly in implementation of General Assembly resolution 51/59 on Action against corruption, adopted at the recommendation of the Commission on Crime Prevention and Criminal Justice and Economic and Social Council on 12 December 1996, including its annex with the Code of Conduct for Public Officials, and General Assembly resolution 51/196 of 16 December 1996 on the proposed United Nations Declaration against Corruption and Bribery in International Commercial Transactions.

2. After an analysis of the phenomena involved, the Meeting considered the possible counter-measures, including those falling within the ambit of criminal law, and of civil, constitutional, fiscal and public law, as well as judicial, administrative and other measures of control. Judicial independence was deemed a key safeguard against corruption, and its role in combating it was emphasized. Particular attention was paid to the need for the coordination of international initiatives against corruption in any future strategy.

3. The multidisciplinary, quadrilingual (English, French, Italian, Spanish) Conference was attended by a wide range of professionals from a number of countries, providing a representative mix of relevant expertise and experience, and a forum for many (over 40) in-depth presentations, as well as an animated discussion on the salient issues and possible follow-up. The approach sought to link theory and practice, and the participation of both officials and scholars enriched the debate and contributed to its dynamic character.

4. In analysing the problem of corruption in its contemporary manifestations, the question was raised of whether these represented an age-old phenomenon in its modern forms, or whether it had expanded and intensified in recent times, requiring exceptional new countermeasures. While it can be said that corruption, like poverty, is always among us, sparing no society - developed or developing - and though its true extent is difficult to determine, it has become more visible, due to its exposure by the media and public calls for accountability. Its growth may be linked to the increasing invasiveness of the State in daily life, with the myriad of necessary permits and authorizations. But corruption can permeate various domains and has complex, interfacing, causes which defy simplistic "solutions".

5. It was felt that corruption, especially high-level corruption, was a major threat to the rule of law and democratic governance; it contravenes essential human rights - not only civil and political rights but also economic and social ones, since it perverts exchange arrangements, impedes reciprocity and destroys interpersonal relations. The rule of law envisages certain distinctions - e.g. between the public and the private, and certain divisions- especially the separation of powers (legislative, executive and judiciary), which are undermined by corruption.

6. Since it thrives on the collusion between economic and public power, it was felt that their interfaces need to be minimized for corruption to be curtailed. But, even here, there can be some paradoxical effects: for example, free market policies and leveling effects of fair competition may generate corruption as a means of gaining competitive advantage. A corrupt competitor may through clandestine machinations, such as money laundering, gain ground at no cost or pass it on to the consumers. Such covert operations require the proper adaptation and refinement of traditional penal law measures, for example to deal with the proceeds of crime, to affirm the criminal responsibility of administrators and financial inspectors, to assure more transparent corporate accounting procedures, etc.. This means, also, the use and development of the necessary expertise, appropriate training, and ongoing collaboration between the various institutions and professions involved, especially in multifaceted and camouflaged cases requiring sophisticated investigations as part of the criminal justice process. The judiciary, of course, has a key role to play in this endeavour, and it was agreed that its independence from political pressures and/or economic influence was essential for the viability of the system and equitable justice.

7. It was also agreed that effective counter-action against corruption required a sustained effort rather than piece-meal, ad hoc measures, though special initiatives can be taken as an adjunct to an established policy designed to upgrade standards of conduct and create a climate averse to the practice of

corruption. Its analysis and the identification of the lacunae and inadequacies in existing approaches should provide a framework for the necessary reform and for integrated preventive and control strategies. In accordance with the credo of ISSD and the addendum to its Minimum Programme, adopted in Milan on 15 December 1984, which considered its position in the face of the new realities of crime (e.g. organized crime, closely linked to corruption), the aim was to avoid rigid and narrow dogmatism, and to follow, rather, a scientific and humane approach aiming to protect the interests of the larger society and the individual, including both the victim and the offender.

8. The Congress agreed that a comprehensive, diversified and multilevel strategy was required rather than a "war" against bribery and corruption. Its development posed a number of challenges which should be faced jointly, with due regard for the complexity involved and danger of excesses. A major legal pitfall, for instance, lay in the temptation to apply a law of exception likely to lead to human rights infringements and confusion of powers. An equilibrium had to be maintained, avoiding the possible excesses of a government of judges, but also its spectre as an argument for the subjection of judges to the government.

9. It was concluded that, to meet the challenge posed by this problem area, policies should be diversified, multidisciplinary and international in scope, using a variety of approaches and means. Knowledge of the phenomenon of corruption, which relied on anonymous, clandestine transactions, should help to prevent it through both general measures (e.g. of an economic and ethical nature) and specific ones (accounting, fiscal and administrative procedures, or even constitutional means). To facilitate detection and pursuit, special services with specific functions can reinforce the mechanisms of control; the cooperation of civil society also needs to be enlisted. A range of sanctions may well be invoked, from disciplinary measures, civil sanctions, and social defence measures, such as education , to penal sanctions - where international policy development would fill a major need.

10. There can be different degrees of international cooperation in this respect, from relatively loose forms of it to harmonization and even unification - so far, primarily at the regional level. The most traditional, and perhaps least ambitious way is to coordinate autonomous regulations. Somewhat more ambitious is the process of assimilation - for example, by including the corruption of foreign officials under the regulations governing nationals. Next, would come the harmonization of criminal law systems through common directives, for example, on the definition of the term "corruption", or by indicating an appropriate penalty. But the shortcomings of these forms of cooperation have engendered calls for closer international (at least regional) collaboration, with a view to the

possible "unification" of approaches within a coherent framework. Thus, in their Geneva Appeal, European magistrates called for the creation of a real European "judicial space" involving the direct collaboration between judges from different countries. However, unification with a solely repressive aim would be neither realistic nor desirable, and the Congress, therefore, reemphasized the need for a range of options which would form part of concerted strategies including legal and other means designed not so much to "stamp out" corruption as to protect the rule of law from its pernicious inroads.